

Remarks

By way of the present amendment, Applicants have amended Claim 9 and added new claims 22-33. Twenty (20) claims remain pending in the application: Claims 9-10, 12-16, and 21-33, of which Claims 9, 28, and 29 are independent. Support for amended Claim 9 and new Claims 28-33 can be found throughout the application as filed; for example, support for amended Claim 9 can be found in FIG. 2 and the related text; support for new Claims 22-24 can be found in Claim 14 as originally filed; support for new Claims 25-27 can be found in Claim 15 as originally filed; support for Claim 28 can be found in paragraphs [0029] and [0008]; support for Claims 29-33 can be found in paragraphs [0019], [0024], and [0027]. Applicants reserve the right to pursue the subject matter of canceled claims and similar claims. Applicants respectfully request reconsideration of the pending claims, in view of the amendments above and comments below.

Claim Rejections**Claim Rejections - 35 USC § 102**

The Examiner rejected Claims 9-10, 12-14, 16 and 21 under 35 U.S.C. § 102(e) as being anticipated by Miller (U.S. patent 6,726,618). According to the Office action,

Regarding claims 9 and 16, as broadly claimed, Miller teaches a behind-the-ear unit (200), a headpiece (204, 206, figure 2), and an assistive listening device cap (100, 102, 104, 118) configured to attach to the headpiece (204, 206) by the magnets (102, 206).

The assistive listening cap (100, 102, 104, 118) includes data communication electronics (104, 118), and the assistive listening cap (100, 102, 104, 118) is configured to mechanically attach to the exterior surface of the headpiece (204, 206) through the magnets, and the data communication electronics are configured to communicate with corresponding communication electronics within the headpiece (col. 6, lines 60-67 through col. 7, lines 1-10).

Claim Rejections - 35 USC § 103

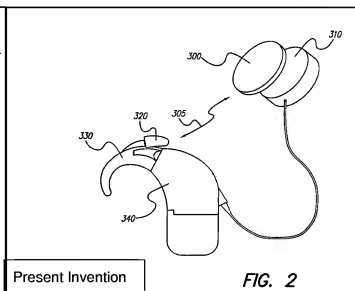
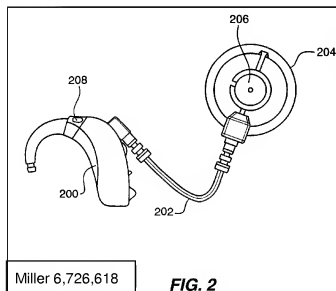
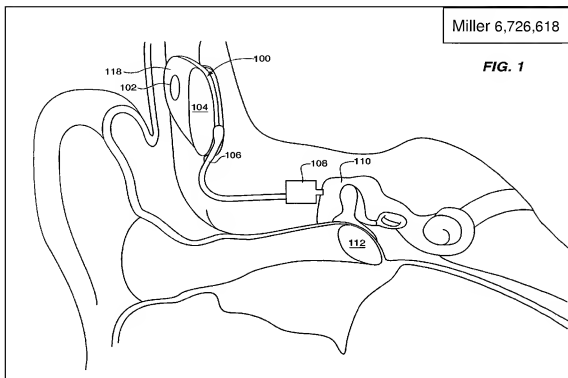
Claim 15 was rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (U.S. patent 6,726,618).

Claim 9 has been amended to clarify that the present invention is directed to an "external" assistive listening device cap; new independent Claims 28 and 29 also include this language. It is submitted that the various embodiments of the assistive listening device cap described throughout the present application are for *external* use, whereas the components of Miller identified by the Examiner as the "assistive listening device cap" (100, 102, 104, and 118) are all *implanted* in the body.

Per Miller Col. 5 lines 56-58, "FIGS. 1 and 2 [copied below] illustrate implantable and external componentry respectively..." Per Col. 6, lines 21-24, "The illustrated example comprises a semi-implantable hearing aid system having *implanted* components shown in FIG. 1, and *external* components shown in FIG. 2." Per Miller Col. 6, lines 28-30, "an *implanted* biocompatible housing 100 is located subcutaneously on a patient's skull." Per Col. 6, lines 60-63, "The external transmitter 204 and *implanted* receiver 118 each include magnets, 206 and 102 respectively, to facilitate retentive juxtaposed positioning." Per Col. 7, lines 10-11, "the *implanted* signal processor 104 processes signals" (*italics added*).

By contrast, in the present invention, the assistive listening device (such as ALD 300 shown in Present Invention FIG. 2) is an *external* device attached to an external component (such as attached to the outer surface of the headpiece 310, per FIG. 2 and paragraph [0021]).

It is further submitted that the implanted components of Miller are not "configured to attach to the headpiece", as required by Claim 9, but rather, magnets 206 and 102 "facilitate retentive juxtaposed positioning"; i.e., the implanted components of Miller FIG. 1 are aligned with external headpiece in Miller FIG. 2, but not attached thereto, with the skin flap in between.



According to paragraph [0019], "The present invention adds functionality to cochlear implant and/or implantable hearing aid devices and systems without adding substantial weight or size to these associated devices or systems to their associated, head-mounted, external components. The present invention accomplishes this by providing an Assistive Listening Device (ALD) Cap that is placed on top of a headpiece that is associated with a Behind-the-Ear (BTE) unit. Alternately, the ALD Cap is place on top of the head-mounted external components associated with a cochlear implant or hearing aid system that does not use a BTE unit. The ALD Cap communicates with the BTE unit or other external components directly or through an auxiliary attachment, e.g., an earhook, attached to the BTE unit. The ALD Cap contains electronics that supplement or replace the functionality of the BTE unit or other head-mounted external components." Per paragraph [0029], "Users...can wear the present invention by attaching an ALD Cap to the exterior of a headpiece ...[or] by attaching an ALD Cap to the exterior of an external component unit. To use the present invention, users simply turn the power on the ALD Cap and place it on top of their existing headpiece or external component unit." It is submitted that this is very different from components 100, 102, 104, and 118, which are components of the implanted device of Miller, and which may be similar to the implantable device used with the system of the present invention. These implanted components do not solve the abovementioned problems; they certainly do not add "functionality to cochlear implant and/or implantable hearing aid devices and systems without adding substantial weight or size to these associated devices"; indeed, these implanted components *are part of* "these associated devices" (i.e., the cochlear implant device itself). Furthermore, the patient cannot place these implantable components on top of his existing headpiece; instead, they require surgery to be implanted subcutaneously on the patient's skull.

In conclusion, Claims 9, 28, and 29 and those claims that depend therefrom should be patentable because the reference does not disclose an external assistive listening device cap as the claims require.

Telephone Interview Summary

The claims and the Miller reference were discussed in a telephone interview with the Examiner on 4/7/08.

The Examiner is invited to telephone the undersigned, Liz Bush, should any issues remain after consideration and entry of this response, in order to permit early resolution of such issues.

Respectfully Submitted,

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/Liz Bush/

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